

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Charles Wynn

04-A-1964

Five Points Correctional Facility

Caller Box 119

Romulus, NY 14541

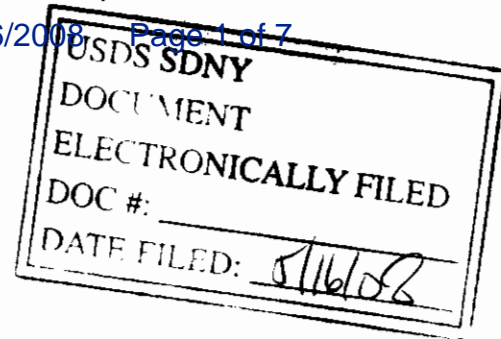
Petitioner.

– against –

John B. Lempke,

Respondent.

RICHARD J. SULLIVAN, District Judge:



Case No.08-CV-03894 (RJS)
ORDER TO SHOW CAUSE


Upon the petition for issuance of a writ of habeas corpus pursuant to 28 U.S.C. 2254, a copy of which is annexed, it is hereby ORDERED that:

Respondents shall show cause why a writ of habeas corpus should not be issued.

The Clerk of the Court shall serve a copy of this Order, the underlying petition, and supporting documents, if any, contained in the Clerk's file by certified mail, upon the Attorney General of the State of New York, Andrew Cuomo, Law Department, 120 Broadway, New York, NY 10271 and Robert Morgenthau, District Attorney of New York County, 1 Hogan Place, New York, NY 10280 and shall also mail a copy of this Order to the petitioner. Respondent shall file an answer or motion and a notice of appearance herein within sixty (60) days from the date of this Order. Transcripts of all relevant proceedings, the briefs submitted on appeal, and the record in any state post-conviction proceedings shall be submitted.

IT IS FURTHER ORDERED that petitioner shall have thirty (30) days from the date on which he is served with respondent's answer to file a response. The petition will be considered fully submitted as of that date.

SO ORDERED.


Richard J. Sullivan,
U.S.D.J.

Dated: New York, New York
May 15, 2008

JUDGE SULLIVAN

08 CV 3894

PETITION UNDER 28 USC § 2251 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court for the Southern District of New York

Name

CHARLES WYNN

Prisoner Identification No.

04A1964

Place of Confinement

FIVE POINTS CORRECTIONAL FACILITY

Name of Petitioner (include name under which convicted)

CHARLES WYNN

Name of Respondent (warden or superintendent of your prison)

V.

JOHN B. LEMPKE

PETITION

1. Name and location of court which entered the judgment of conviction under attack SUPREME COURTNEW YORK COUNTY2. Name and address of lawyer who represented you BRIAN D. PERSKIN, ATTORNY FOR DEFENDANT205 MONTAGUE STREET, SUITE 400, BROOKLYN, NEW YORK3. Date of judgment of conviction MARCH 30TH, 20044. Length of sentence 35 YEARS (AGGREGATE)5. Nature of offense involved (all counts) SEE EXHIBIT A, PAGE 1 (APPELLATE BRIEF)

6. What was your plea? (Check one)

(a) Not guilty

☒

(b) Guilty

☐

(c) Nolo contendere

☐

If you entered a guilty plea to one count of indictment, and not a guilty plea to another count of indictment, give details:

N/A

7. If you pleaded not guilty, what kind of trial did you have? (Check one)

7. If you pleaded not guilty, what kind of trial did you have? (Check one)

- (a) Jury ☒
 (b) Judge only ☐

8. Did you testify at the trial?

Yes ☐ No ☐

9. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

10. If you did appeal, answer the following:

(a) Name of court APPELLATE DIVISION: FIRST DEPARTMENT

(b) Name and address of lawyer who represented you

STEVEN BANKS - THE LEGAL AID SOCIETY - 199 WATER STREET, NYC, NY 10038

(c) Result AFFIRMED -

(d) Date of result and citation, if known 12/16/06 - 35 A.D.3D 283

(e) Grounds raised SEE EXHIBIT A, PAGE 2

(f) If you sought further review of the decision by appeal to a higher state court, please answer the following:

(1) Name of court COURT OF APPEALS

(2) Name and address of lawyer who represented you STEVEN BANKS - 199 WATER STREET

(3) Result LEAVE DENIED

(4) Date of result and citation, if known MARCH 13, 2007 - 8 N.Y.3D 928

(5) Grounds raised SEE EXHIBIT C

(g) If you filed a petition for Writ of Certiorari in the United States Supreme Court, please provide the date the petition was filed and the date of result and citation, if known

N/A

(1) Name and address of lawyer who represented you N/A

11. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☐ No ☒

12. If your answer to 11 was "yes," give the following information:

(a) (1) Name of court _____

(2) Name and address of lawyer who represented you _____

(3) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Date motion was filed with the Court _____

(6) Date and result of motion _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Name and address of lawyer who represented you _____

(3) Nature of proceeding _____

(4) Grounds raised _____

(5) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(6) Date motion was filed with the Court _____

(7) Date and result of motion _____

(c) Did you appeal to the highest state court having jurisdiction the decision on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

N/A

13. **STATE EVERY GROUND ON WHICH YOU CLAIM THAT YOU ARE BEING HELD UNLAWFULLY . EACH GROUND SHOULD BE SET FORTH UNDER A SEPARATELY NUMBERED PARAGRAPH . IF YOU ARE RAISING THE SAME GROUNDS THAT YOU RAISED ON DIRECT APPEAL , YOU SHOULD ATTACH A COPY OF YOUR STATE COURT APPELLATE BRIEF OR ITS TABLE OF CONTENTS . YOU MUST EXHAUST YOUR STATE COURT REMEDIES ON EACH GROUND YOU ARE CLAIMING YOU ARE BEING HELD UNLAWFULLY .**

Ground(s):

SEE ATTACHMENT

(attach additional papers as necessary)

14. **TIMELINESS OF PETITION:** If your judgment of conviction was made final over one-year ago, you must set forth below why the one-year statute of limitations as codified in 28 U.S.C. § 2244(d) does not bar your petition.*

N/A

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as codified in 28 U.S.C. § 2244(d) provides in part that:

(1) A 1- year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of --

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court and made

retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

15. Do you have a petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes ☐ No ☒

(a) If so, give the name and location of court in which the petition or appeal is pending _____

16. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: N/A

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

I declare under penalty of perjury that the foregoing is true and correct. Executed on

March 25th, 2008
(date)

Sworn to before me this

25 day of March, 2008

Reno P. Colton

Reno P. Colton
Notary Public for the State of New York
Notary No. 00000000000
Commission Expires Nov. 9, 2009

Charles Wy Si.

Signature of Petitioner

04A1964

Inmate Number

Box 119
Romulus, NY 14541
Address

I declare under penalty of perjury that on March 25th, 2008, I delivered this petition to prison authorities to be
(date)

mailed to the United States District Court for the Southern District of New York.

Charles Wy Si.

Signature of Petitioner